

## 13 Am. Jur. 2d Carriers One I A Refs.

American Jurisprudence, Second Edition | May 2021 Update

### Carriers

George L. Blum, J.D.; John Bourdeau, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Jill Gustafson, J.D.; Karl Oakes, J.D.; Lucas Martin, J.D.; and Jeffrey J. Shampo, J.D.

### Part One. In General

#### I. Definitions and Distinctions

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## Research References

### West's Key Number Digest

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## 13 Am. Jur. 2d Carriers § 1

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### Carriers

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### Part One. In General

#### I. Definitions and Distinctions

##### A. In General

## § 1. Who is carrier, generally

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### West's Key Number Digest

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The term “carrier” generally refers to one who undertakes the transportation of persons or property<sup>1</sup> or one employed in or engaged in the business of carrying goods for others for a fee.<sup>2</sup>

#### Observation:

Carriers are classified as private carriers or common carriers<sup>3</sup> and with respect to the subjects of carriage, as carriers of property<sup>4</sup> or of persons.<sup>5</sup>

The term “shipper” is commonly understood to mean the person for whose account the carriage of goods is undertaken.<sup>6</sup> Thus, the “shipper” is the party who supplies the goods to be transported, and the “carrier” is the transporter.<sup>7</sup>

A party can qualify as a carrier where it accepts responsibility for the transportation of goods regardless of who actually transports them.<sup>8</sup> However, a transportation company that hires another company to transport a shipment is not a “carrier,”<sup>9</sup> and thus, a freight broker is not a “carrier,” even where the bill of lading and invoice lists the broker as a “carrier,” where the broker’s only role is to negotiate and arrange for transportation of the shipment by the carrier, and it does not take possession of the cargo, nor transport it at any time.<sup>10</sup> Whether a company is a broker or a carrier is not determined by what the company labels itself, but by how it represents itself to the world and its relationship to the shipper.<sup>11</sup>

Footnotes

- <sup>1</sup> Crescent Towing & Salvage Co., Inc. v. Ormet Corp., 694 So. 2d 1121 (La. Ct. App. 1st Cir. 1997), writ granted, 703 So. 2d 588 (La. 1997) and judgment aff'd, 720 So. 2d 628 (La. 1998); Bovain v. Canal Ins., 383 S.C. 100, 678 S.E.2d 422 (2009); Hunt ex rel. Gende v. Clarendon Nat. Ins. Service, Inc., 2005 WI App 11, 278 Wis. 2d 439, 691 N.W.2d 904, 195 Ed. Law Rep. 293 (Ct. App. 2004).
- <sup>2</sup> Adelman v. Hub City Los Angeles Terminal, Inc., 856 F. Supp. 1544 (N.D. Ala. 1994); Crescent Towing & Salvage Co., Inc. v. Ormet Corp., 694 So. 2d 1121 (La. Ct. App. 1st Cir. 1997), writ granted, 703 So. 2d 588 (La. 1997) and judgment aff'd, 720 So. 2d 628 (La. 1998); Thompson v. Heineman, 289 Neb. 798, 857 N.W.2d 731 (2015).
- <sup>3</sup> People v. Duntley, 217 Cal. 150, 17 P.2d 715 (1932); Crane v. Railway Express Agency, 369 Ill. 110, 15 N.E.2d 866 (1938); Boquette v. Boquette, 215 Iowa 990, 247 N.W. 255 (1933); Automobile Ins. Co. of Hartford, Conn. v. Cochran, 262 Mich. 605, 247 N.W. 755 (1933); Bernardi Greater Shows v. Boston & M.R.R., 86 N.H. 146, 165 A. 124 (1933).  
As to the definition of common carriers, see § 2.  
As to the definition of private carriers, see § 3.  
As to the requisites of common carrier status, see §§ 5 to 10.
- <sup>4</sup> §§ 267 to 668.
- <sup>5</sup> §§ 669 to 1245.
- <sup>6</sup> Star Line Trucking Corp. v. Department of Industry, Labor and Human Relations, 109 Wis. 2d 266, 325 N.W.2d 872 (1982).
- <sup>7</sup> Logistics Management, Inc. v. One (1) Pyramid Tent Arena, 86 F.3d 908 (9th Cir. 1996).
- <sup>8</sup> Apex Capital LP v. Carnival Corp., 123 So. 3d 94 (Fla. 3d DCA 2013).
- <sup>9</sup> Chatelaine, Inc. v. Twin Modal, Inc., 737 F. Supp. 2d 638 (N.D. Tex. 2010).
- <sup>10</sup> Delta Stone Products v. Xpertfreight, 304 F. Supp. 3d 1119 (D. Utah 2018).
- <sup>11</sup> Gonzalez v. J.W. Cheatham LLC, 125 So. 3d 942 (Fla. 4th DCA 2013).

## 13 Am. Jur. 2d Carriers § 2

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### Carriers

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### Part One. In General

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## § 2. Common carriers

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### West's Key Number Digest

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At common law, a “common carrier” is one who is obligated to transport goods by any who will hire that carrier.<sup>1</sup> The constituent shared by “common carriers” is an indiscriminate readiness to carry all persons or property who choose to avail themselves of its service;<sup>2</sup> or stated another way, a “common carrier” is one that holds itself out to the public as ready to carry for anyone who requests its services.<sup>3</sup> Thus, common carriers are those who hold themselves out to the public as engaged in the business of transporting persons or property from place to place for compensation, offering their services to the public, generally.<sup>4</sup>

The following factors characterize a common carrier: (1) the service is for hire, (2) the carrier holds itself out to the public, (3) the operator controls the manner of transportation, and (4) the passenger places oneself in the operator’s care.<sup>5</sup> A “common carrier” has also been defined as one that holds itself out as furnishing transportation to any and all members of the public who desire those services to the extent that its facilities enable it to perform the service<sup>6</sup> or to the extent it has the capacity to carry the tendered cargo.<sup>7</sup>

It is a question of law what constitutes a common carrier,<sup>8</sup> but it is a question of fact whether, under the evidence in a particular case, one charged as a common carrier comes within the definition of that term and is conducting its business in that capacity.<sup>9</sup>

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### Footnotes

<sup>1</sup> [Market Transport, Ltd. v. Maudlin, 301 Or. 727, 725 P.2d 914 \(1986\).](#)

- <sup>2</sup> Alpha Zeta Chapter of Pi Kappa Alpha Fraternity by *Damron v. Sullivan*, 293 Ark. 576, 740 S.W.2d 127 (1987); *Huang v. The Bicycle Casino, Inc.*, 4 Cal. App. 5th 329, 208 Cal. Rptr. 3d 591 (2d Dist. 2016); *Employers Mut. Cas. Co. v. Chicago and North Western Transp. Co.*, 521 N.W.2d 692 (Iowa 1994).  
As to discrimination by common carriers, see §§ 228 to 266.
- <sup>3</sup> *All American Telephone Company, Inc. v. Federal Communications Commission*, 867 F.3d 81 (D.C. Cir. 2017); *J. Aron & Co. v. Cargill Marine Terminal, Inc.*, 998 F. Supp. 700 (E.D. La. 1998); *Ally Financial Inc. v. Pira*, 2017 IL App (2d) 170213, 420 Ill. Dec. 256, 96 N.E.3d 61 (App. Ct. 2d Dist. 2017); *Girard v. Youngstown Belt Ry. Co.*, 134 Ohio St. 3d 79, 2012-Ohio-5370, 979 N.E.2d 1273 (2012).  
In determining whether a person is a common carrier, the determinative factor is whether the person either “transports” or “holds himself out to public as willing to transfer” persons or property for hire. *Market Transport, Ltd. v. Maudlin*, 301 Or. 727, 725 P.2d 914 (1986).
- <sup>4</sup> *State of Washington ex rel. Stimson Lumber Co. v. Kuykendall*, 275 U.S. 207, 48 S. Ct. 41, 72 L. Ed. 241 (1927); *Vumbaca v. Terminal One Group Ass’n L.P.*, 859 F. Supp. 2d 343 (E.D. N.Y. 2012) (applying New York law); *North American Acc. Ins. Co. v. Pitts*, 213 Ala. 102, 104 So. 21, 40 A.L.R. 1171 (1925); *Huang v. The Bicycle Casino, Inc.*, 4 Cal. App. 5th 329, 208 Cal. Rptr. 3d 591 (2d Dist. 2016) (“common carrier for reward”); *Ally Financial Inc. v. Pira*, 2017 IL App (2d) 170213, 420 Ill. Dec. 256, 96 N.E.3d 61 (App. Ct. 2d Dist. 2017); *Goodman v. New York, N.H. & H.R. Co.*, 295 Mass. 330, 3 N.E.2d 777, 106 A.L.R. 1151 (1936); *Chavez v. Cedar Fair, LP*, 450 S.W.3d 291 (Mo. 2014), as modified on denial of reh’g, (Dec. 23, 2014); *Thompson v. Heineman*, 289 Neb. 798, 857 N.W.2d 731 (2015); *Kinder Morgan Cochin L.L.C. v. Simonson*, 2016-Ohio-4647, 66 N.E.3d 1176 (Ohio Ct. App. 5th Dist. Ashland County 2016), appeal not allowed, 147 Ohio St. 3d 1506, 2017-Ohio-261, 67 N.E.3d 823 (2017); *Travis v. Dickey*, 1924 OK 4, 96 Okla. 256, 222 P. 527 (1924); *Anderson v. Smith-Powers Logging Co.*, 71 Or. 276, 139 P. 736 (1914); *Dairymen’s Co-Operative Sales Ass’n v. Public Service Commission of Pennsylvania*, 318 Pa. 381, 177 A. 770, 98 A.L.R. 218 (1935); *Bennett Truck Transport, LLC v. Williams Bros. Const.*, 256 S.W.3d 730 (Tex. App. Houston 14th Dist. 2008); *Riggsby v. Tritton*, 143 Va. 903, 129 S.E. 493, 45 A.L.R. 280 (1925); *Cushing v. White*, 101 Wash. 172, 172 P. 229 (1918); *Brockway v. Travelers Ins. Co.*, 107 Wis. 2d 636, 321 N.W.2d 332 (Ct. App. 1982).  
As to factors that affect the nature of a carrier as a common carrier, see §§ 5 to 10.
- <sup>5</sup> *Hunt ex rel. Gende v. Clarendon Nat. Ins. Service, Inc.*, 2005 WI App 11, 278 Wis. 2d 439, 691 N.W.2d 904, 195 Ed. Law Rep. 293 (Ct. App. 2004).
- <sup>6</sup> *Kvalheim v. Horace Mann Life Ins. Co.*, 219 N.W.2d 533 (Iowa 1974); *Commerce Ins. Co. v. Ultimate Livery Service, Inc.*, 452 Mass. 639, 897 N.E.2d 50 (2008).
- <sup>7</sup> *Kinder Morgan Cochin L.L.C. v. Simonson*, 2016-Ohio-4647, 66 N.E.3d 1176 (Ohio Ct. App. 5th Dist. Ashland County 2016), appeal not allowed, 147 Ohio St. 3d 1506, 2017-Ohio-261, 67 N.E.3d 823 (2017); *Railroad Commission of Texas v. United Parcel Service, Inc.*, 614 S.W.2d 903 (Tex. Civ. App. Austin 1981), writ refused n.r.e., 629 S.W.2d 33 (Tex. 1981).
- <sup>8</sup> *Huang v. The Bicycle Casino, Inc.*, 4 Cal. App. 5th 329, 208 Cal. Rptr. 3d 591 (2d Dist. 2016) (when the material facts are not in dispute); *Wright v. Midwest Old Settlers and Threshers Ass’n*, 556 N.W.2d 808 (Iowa 1996); *Beavers v. Federal Ins. Co.*, 113 N.C. App. 254, 437 S.E.2d 881 (1994); *Brockway v. Travelers Ins. Co.*, 107 Wis. 2d 636, 321 N.W.2d 332 (Ct. App. 1982).
- <sup>9</sup> *Wright v. Midwest Old Settlers and Threshers Ass’n*, 556 N.W.2d 808 (Iowa 1996); *Beavers v. Federal Ins. Co.*, 113 N.C. App. 254, 437 S.E.2d 881 (1994); *Brockway v. Travelers Ins. Co.*, 107 Wis. 2d 636, 321 N.W.2d 332 (Ct. App. 1982).

## 13 Am. Jur. 2d Carriers § 3

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### Carriers

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### Part One. In General

#### I. Definitions and Distinctions

##### A. In General

## § 3. Private or contract carriers

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### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  3, 76

### Forms

Forms relating to private or contract carriers, see Am. Jur. Pleading and Practice Forms, Carriers [\[Westlaw®\(r\) Search Query\]](#)

A “private carrier,” in contrast to a common carrier,<sup>1</sup> undertakes by special agreement only in a particular instance to transport persons or property from one place to another, either gratuitously or for hire.<sup>2</sup> A carrier is also deemed a “private carrier” when it transports property for compensation, for hire, or for commercial purposes and that transportation is incidental to or in furtherance of any commercial enterprise other than transportation.<sup>3</sup>

Private carriers do not undertake to carry for all persons indiscriminately but transport only for those with whom they contract or choose to deal.<sup>4</sup> They haul for others but only pursuant to individual contracts<sup>5</sup> or “special agreements.”<sup>6</sup> A private carrier is not under an obligation to serve all who apply.<sup>7</sup>

A private carrier is not transformed into a common carrier merely because a passenger is incidentally transported,<sup>8</sup> nor may a carrier be changed from a private carrier to a common carrier by legislative enactment.<sup>9</sup>

What constitutes a private carrier is a question of law, but whether a carrier is actually serving as a private rather than a common carrier is a question of fact.<sup>10</sup>

The phrase “contract carriage” is also used to describe transportation which, unlike “common carriage,” is limited to shippers with which carriers enter into specific agreements or contracts.<sup>11</sup>

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Footnotes

- <sup>1</sup> § 2.
- <sup>2</sup> *Browne v. SCR Medical Transp. Services, Inc.*, 356 Ill. App. 3d 642, 292 Ill. Dec. 594, 826 N.E.2d 1030 (1st Dist. 2005).
- <sup>3</sup> *Total Rehabilitation & Medical Centers, Inc. v. E.B.O.*, 915 So. 2d 694 (Fla. 3d DCA 2005); *Dolese Bros. Co. v. Privett*, 1981 OK 2, 622 P.2d 1080 (Okla. 1981).  
A wholesale distributor of agricultural products, who entered into a lease agreement with a trucking company for a semitractor and driver to deliver its products, was a “private carrier” rather than a “motor carrier,” where, although the distributor owned its own fleet of semitractors and received compensation for transporting its own goods, such transportation was secondary to its fertilizer and chemical business. *United Suppliers, Inc. v. Hanson*, 876 N.W.2d 765 (Iowa 2016).
- <sup>4</sup> *Van Maanen v. Youth With a Mission-Bishop*, 852 F. Supp. 2d 1232, 283 Ed. Law Rep. 197 (E.D. Cal. 2012), *aff’d*, 542 Fed. Appx. 581 (9th Cir. 2013) (applying California law); *Circle Exp. Co. v. Iowa State Commerce Commission*, 249 Iowa 651, 86 N.W.2d 888 (1957); *Public Utilities Commission v. Johnson Motor Transport*, 147 Me. 138, 84 A.2d 142 (1951); *Commerce Ins. Co. v. Ultimate Livery Service, Inc.*, 452 Mass. 639, 897 N.E.2d 50 (2008); *Yellow Book of New York, Inc. v. Commissioner of Taxation and Finance*, 75 A.D.3d 931, 906 N.Y.S.2d 386 (3d Dep’t 2010); *State ex rel. Utilities Commission v. Gulf-Atlantic Towing Corp.*, 251 N.C. 105, 110 S.E.2d 886 (1959); *Rogers v. Crespi & Co.*, 259 S.W.2d 928 (Tex. Civ. App. Waco 1953); *Realty Purchasing Co. v. Public Service Commission*, 9 Utah 2d 375, 345 P.2d 606 (1959); *Miles v. Enumclaw Co-op. Creamery Corp.*, 12 Wash. 2d 377, 121 P.2d 945 (1942).
- <sup>5</sup> *Kieronski v. Wyandotte Terminal R. Co.*, 806 F.2d 107 (6th Cir. 1986) (rejected on other grounds by, *Smith v. Rail Link, Inc.*, 697 F.3d 1304 (10th Cir. 2012)); *Loveless v. Ry. Switching Serv., Inc.*, 106 Ohio App. 3d 46, 665 N.E.2d 252 (1st Dist. Hamilton County 1995).
- <sup>6</sup> *Webster v. Ebright*, 3 Cal. App. 4th 784, 4 Cal. Rptr. 2d 714 (3d Dist. 1992); *Doe v. Rockdale School Dist.*, No. 84, 287 Ill. App. 3d 791, 223 Ill. Dec. 320, 679 N.E.2d 771, 119 Ed. Law Rep. 567 (3d Dist. 1997).
- <sup>7</sup> *Browne v. SCR Medical Transp. Services, Inc.*, 356 Ill. App. 3d 642, 292 Ill. Dec. 594, 826 N.E.2d 1030 (1st Dist. 2005); *AT&T Communications of Maryland, Inc. v. Comptroller of Treasury*, 405 Md. 83, 950 A.2d 86 (2008); *Yellow Book of New York, Inc. v. Commissioner of Taxation and Finance*, 75 A.D.3d 931, 906 N.Y.S.2d 386 (3d Dep’t 2010).
- <sup>8</sup> *Long v. Illinois Power Co.*, 187 Ill. App. 3d 614, 135 Ill. Dec. 142, 543 N.E.2d 525 (4th Dist. 1989).
- <sup>9</sup> *Commissioners of Sinking Fund of City of Louisville v. Our Own Deliveries, Inc.*, 382 S.W.2d 878 (Ky. 1964).
- <sup>10</sup> *State ex rel. Bd. of R. R. Com’rs v. Rosenstein*, 217 Iowa 985, 252 N.W. 251 (1934); *Public Utilities Commission v. Johnson Motor Transport*, 147 Me. 138, 84 A.2d 142 (1951); *Cooperative Legislative Committee of R. R. Brotherhoods v. Public Utilities Commission*, 149 Ohio St. 511, 37 Ohio Op. 240, 80 N.E.2d 159 (1948); *Miles v. Enumclaw Co-op. Creamery Corp.*, 12 Wash. 2d 377, 121 P.2d 945 (1942).
- <sup>11</sup> *In re Transcon Lines*, 89 F.3d 559 (9th Cir. 1996); *Yellow Book of New York, Inc. v. Commissioner of Taxation and Finance*, 75 A.D.3d 931, 906 N.Y.S.2d 386 (3d Dep’t 2010).  
The distinction between a “common carrier” and a “contract carrier” is that a common carrier must hold itself out to provide service to the general public, but a contract carrier provides service only under written bilateral contracts. *Holland Motor Exp., Inc. v. Illinois Commerce Com’n*, 165 Ill. App. 3d 703, 117 Ill. Dec. 331, 520 N.E.2d 682 (1st Dist. 1987).

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## 13 Am. Jur. 2d Carriers § 4

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### Part One. In General

#### I. Definitions and Distinctions

##### A. In General

## § 4. Common carrier acting as private or contract carrier

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### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  4, 76

A single carrier can act as a common carrier or a contract carrier, varying from job to job.<sup>1</sup> Both the type of authority a company holds and the type of relationship it has with its customer must be considered in determining whether the carrier is operating as a common or contract carrier.<sup>2</sup>

A common carrier may become a private carrier when, as a matter of accommodation or special engagement, it undertakes to carry something that is not its normal business to carry.<sup>3</sup> However, a common carrier may not, by special agreement with the shipper, make itself a private carrier with respect to those subjects of carriage it is bound to transport.<sup>4</sup>

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### Footnotes

<sup>1</sup> [BML Stage Lighting, Inc. v. Mayflower Transit, Inc.](#), 14 S.W.3d 395 (Tex. App. Houston 14th Dist. 2000), opinion supplemented on other grounds on overruling of reh'g, 66 S.W.3d 304 (Tex. App. Houston 14th Dist. 2000).

<sup>2</sup> [Yellow Book of New York, Inc. v. Commissioner of Taxation and Finance](#), 75 A.D.3d 931, 906 N.Y.S.2d 386 (3d Dep't 2010).

<sup>3</sup> [Alabama Great Southern R. Co. v. Herring](#), 234 Ala. 238, 174 So. 502 (1937); [In re United Parcel Service, Inc.](#), 256 A.2d 443 (Me. 1969); [Coleman v. Pennsylvania R. Co.](#), 242 Pa. 304, 89 A. 87 (1913); [Graham v. Dean](#), 186 S.W.2d 692 (Tex. Civ. App. Amarillo 1945), certified question on other grounds answered, 144 Tex. 61, 188 S.W.2d 372 (1945).

<sup>4</sup> [Victory Sparkler & Specialty Co v. Baird & Daniels Co](#), 6 F.2d 29 (C.C.A. 2d Cir. 1925); [Denver & R.G.W. Ry. Co.](#)

**§ 4. Common carrier acting as private or contract carrier, 13 Am. Jur. 2d Carriers § 4**

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v. Linck, 56 F.2d 957 (C.C.A. 10th Cir. 1932); Heuer Truck Lines v. Brownlee, 239 Iowa 267, 31 N.W.2d 375 (1948); Campbell v. A.B.C. Storage & Van Co., 187 Mo. App. 565, 174 S.W. 140 (1915); Clifford W. Brown v. Bonesteele, 218 Or. 312, 344 P.2d 928 (1959).

A common carrier does not become a private carrier merely by some special agreement with persons arranging transportation but can become a private carrier if it transports something that would not ordinarily be carried in its business. Long v. Illinois Power Co., 187 Ill. App. 3d 614, 135 Ill. Dec. 142, 543 N.E.2d 525 (4th Dist. 1989).

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### Part One. In General

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## 13 Am. Jur. 2d Carriers § 5

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### Carriers

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### Part One. In General

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## § 5. Nature of common carrier, generally

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### West's Key Number Digest

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[Incidental provision of transportation services, by party not primarily in that business, as common carriage subject to state regulatory control, 87 A.L.R.4th 638](#)

[Who is a "common carrier" or "carrier" within the meaning of sec. 3\(h\) of the Communications Act of 1934 \(47 U.S.C.A. sec. 153\(h\)\), 46 A.L.R. Fed. 626](#)

The nature of a carrier is determined by its method of operation<sup>1</sup> rather than by what it represents it does.<sup>2</sup> Whether a corporation is a common or contract carrier depends on the nature and character of the business actually conducted and the methods and means employed.<sup>3</sup> A court looks to the entity's primary function and determines whether its business is public transportation or whether transportation is only incidental to its primary business.<sup>4</sup> To be a common carrier, a company need only, in practice, serve the public indiscriminately and not make individualized decisions whether and on what terms to transport persons or property.<sup>5</sup> A common carrier is not, however, prohibited from placing terms or conditions on its services.<sup>6</sup> A carrier may be a common carrier even though the nature of the service rendered is sufficiently specialized as to be of possible use to only a fraction of the total population,<sup>7</sup> and business may be turned away because it is not of the type normally accepted.<sup>8</sup>

The term "common carrier" does not describe the legal obligations of a company but how the company does business,<sup>9</sup> although the classification does have legal consequences, such as on the duty to receive and transport property.<sup>10</sup>

Because a common carrier undertakes to carry for all people indifferently<sup>11</sup> it may be regarded, in some respects, as a public servant<sup>12</sup> or as having a quasi-public character.<sup>13</sup> Hence, one performing transportation service for only oneself is not a common carrier.<sup>14</sup> However, it is not necessary that a carrier come within the definition of a public utility so as to be subject to the rules and regulations of a public utility commission to be a common carrier.<sup>15</sup>

One that undertakes carriage for a particular group or class of persons under a special contractual arrangement is not a common carrier.<sup>16</sup> One that solicits patronage from the public generally but reserves the right to accept or reject the offered business arbitrarily or on an individualized basis is not a common carrier.<sup>17</sup>

The fact that one furnishing transportation service does not make written contracts with patrons<sup>18</sup> or does not advertise<sup>19</sup> does not affect a carrier's status as a common carrier. It has also been held, however, that in deciding if a party is a common carrier, the court may consider whether the party advertises its services to the general public.<sup>20</sup>

While it has been held that the issuance of a bill of lading does not affect the determination of whether one is a contract carrier or a common carrier,<sup>21</sup> there is also authority that cargo insurance and bills of lading are indicia of common carriage.<sup>22</sup>

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#### Footnotes

<sup>1</sup> [McDonald v. Irby](#), 74 Wash. 2d 431, 445 P.2d 192 (1968).

<sup>2</sup> [Kvalheim v. Horace Mann Life Ins. Co.](#), 219 N.W.2d 533 (Iowa 1974).

<sup>3</sup> [Gallant by Gallant v. Gorton](#), 581 F. Supp. 909 (D. Mass. 1984) (applying Massachusetts law).  
As to the definition of "common carrier," see § 2.  
As to the significance of compensation as a factor in determining whether a carrier is a common carrier, see § 6.

<sup>4</sup> [Speed Boat Leasing, Inc. v. Elmer](#), 124 S.W.3d 210 (Tex. 2003).  
In its provision of motorcycle safety courses, the National Safety Council is not a common carrier since it does not provide transportation services to the general public. [Cormier v. Central Massachusetts Chapter of Nat. Safety Council](#), 416 Mass. 286, 620 N.E.2d 784 (1993).  
As to transportation as an incident of one's business being a distinguishing feature of a private carrier, see § 3.

<sup>5</sup> [Air Evac EMS, Inc. v. Cheatham](#), 910 F.3d 751 (4th Cir. 2018); [American Orient Exp. Ry. Co., LLC v. Surface Transp. Bd.](#), 484 F.3d 554 (D.C. Cir. 2007).

<sup>6</sup> [Riegelsberger v. Air Evac EMS, Inc.](#), 369 F. Supp. 3d 901 (E.D. Mo. 2019).

<sup>7</sup> [Air Evac EMS, Inc. v. Cheatham](#), 910 F.3d 751 (4th Cir. 2018); [American Orient Exp. Ry. Co., LLC v. Surface Transp. Bd.](#), 484 F.3d 554 (D.C. Cir. 2007); [Huang v. The Bicycle Casino, Inc.](#), 4 Cal. App. 5th 329, 208 Cal. Rptr. 3d 591 (2d Dist. 2016); [Thompson v. Heineman](#), 289 Neb. 798, 857 N.W.2d 731 (2015).

<sup>8</sup> [Riegelsberger v. Air Evac EMS, Inc.](#), 369 F. Supp. 3d 901 (E.D. Mo. 2019).

<sup>9</sup> [American Orient Exp. Ry. Co., LLC v. Surface Transp. Bd.](#), 484 F.3d 554 (D.C. Cir. 2007).

<sup>10</sup> §§ 276 to 297.

<sup>11</sup> § 2.

<sup>12</sup> [Van Maanen v. Youth With a Mission-Bishop](#), 852 F. Supp. 2d 1232, 283 Ed. Law Rep. 197 (E.D. Cal. 2012), *aff'd*, 542 Fed. Appx. 581 (9th Cir. 2013) (applying California law); [Walton v. A. B. C. Fireproof Warehouse Co.](#), 235 Mo. App. 939, 151 S.W.2d 494 (1941); [Loveless v. Ry. Switching Serv., Inc.](#), 106 Ohio App. 3d 46, 665 N.E.2d 252 (1st Dist. Hamilton County 1995); [Travis v. Dickey](#), 1924 OK 4, 96 Okla. 256, 222 P. 527 (1924); [City of Portland v. Western Union Telegraph Co.](#), 75 Or. 37, 146 P. 148 (1915); [Reaves v. Western Union Telegraph Co.](#), 110 S.C. 233, 96 S.E. 295 (1918).

- <sup>13</sup> Florida Power & Light Co. v. Federal Energy Regulatory Commission, 660 F.2d 668 (5th Cir. 1981); All American Telephone Company, Inc. v. Federal Communications Commission, 867 F.3d 81 (D.C. Cir. 2017).
- <sup>14</sup> Associated Pipe Line Co. v. Railroad Commission of Cal., 176 Cal. 518, 169 P. 62 (1917); State ex rel. Fatzer v. Sinclair Pipe Line Co., 180 Kan. 425, 304 P.2d 930 (1956); Weller v. Kolb's Bakery & Dairy, 176 Md. 191, 4 A.2d 130 (1939); City of Bayard v. North Central Gas Co., 164 Neb. 819, 83 N.W.2d 861 (1957).  
An applicant was not a "common carrier," when the applicant dedicated his equipment to first serve his own needs and those of his customers, in contravention of a common carrier's duty to devote itself to public service without discrimination. Application of Harms, 491 N.W.2d 760 (S.D. 1992).
- <sup>15</sup> Saltis v. A.B.B. Daimler Benz, 243 Ga. App. 603, 533 S.E.2d 772 (2000).
- <sup>16</sup> Georgia Life Ins. Co. of Macon, Ga., v. Easter, 189 Ala. 472, 66 So. 514 (1914); Gornstein v. Priver, 64 Cal. App. 249, 221 P. 396 (2d Dist. 1923); Ace-High Dresses v. J. C. Trucking Co., 122 Conn. 578, 191 A. 536, 112 A.L.R. 86 (1937); State ex rel. Board of R.R. Com'rs v. Carlson, 217 Iowa 854, 251 N.W. 160 (1933).  
As to the definition of a private carrier, see § 3.
- <sup>17</sup> Florida Power & Light Co. v. Federal Energy Regulatory Commission, 660 F.2d 668 (5th Cir. 1981); Erwin Mills, Inc. v. Williams, 238 Miss. 335, 118 So. 2d 339 (1960); Weaver v. Public Service Commission of Wyoming, 40 Wyo. 462, 278 P. 542 (1929).
- <sup>18</sup> Nolan v. Public Utilities Commission, 41 Cal. 2d 392, 260 P.2d 790 (1953); Bingaman v. Public Service Commission, 105 Pa. Super. 272, 161 A. 892 (1932).
- <sup>19</sup> Smith v. State, 199 Ind. 217, 156 N.E. 513 (1927); Circle Exp. Co. v. Iowa State Commerce Commission, 249 Iowa 651, 86 N.W.2d 888 (1957); Klawansky v. Public Service Commission of Pa., 123 Pa. Super. 375, 187 A. 248 (1936).
- <sup>20</sup> Martine v. Heavenly Valley Limited Partnership, 27 Cal. App. 5th 715, 238 Cal. Rptr. 3d 237 (3d Dist. 2018), review denied, (Dec. 19, 2018).
- <sup>21</sup> Triple E Transport, Inc. v. U.S. Pipe and Foundry Co., Inc., 732 So. 2d 290 (Ala. 1999).
- <sup>22</sup> Atlantis Exp., Inc. v. LL Transport Services, Inc., 481 N.W.2d 79 (Minn. Ct. App. 1992).

## 13 Am. Jur. 2d Carriers § 6

American Jurisprudence, Second Edition | May 2021 Update

### Carriers

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### Part One. In General

#### I. Definitions and Distinctions

#### B. Factors Affecting Status as Common Carrier

## § 6. Compensation by charge, fare, or rate

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  4

A common carrier is one that carries for hire—that is, receives or is entitled to receive compensation for services.<sup>1</sup> A factor in deciding whether a party is a common carrier is whether it charges standard fees for its services.<sup>2</sup> Under other authority, however, it is not necessary for one to be classified as a common carrier that the rate be fixed,<sup>3</sup> although it has been held that a reserved right to fix the rate in each individual case precludes common carrier status.<sup>4</sup>

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### Footnotes

- <sup>1</sup> [City of Bayard v. North Central Gas Co.](#), 164 Neb. 819, 83 N.W.2d 861 (1957); [Lesesne v. Atlantic Coast Line R. Co.](#), 114 S.C. 95, 103 S.E. 147 (1920).  
For a carrier to be subject to the rules applicable to a common carrier, the carriage must be for hire or remuneration. [McDonald v. Irby](#), 74 Wash. 2d 431, 445 P.2d 192 (1968).  
"Transportation for hire" requires compensation by charge, fare, rate, or some other plan and connotes a business operation. [Brockway v. Travelers Ins. Co.](#), 107 Wis. 2d 636, 321 N.W.2d 332 (Ct. App. 1982).
- <sup>2</sup> [Martine v. Heavenly Valley Limited Partnership](#), 27 Cal. App. 5th 715, 238 Cal. Rptr. 3d 237 (3d Dist. 2018), review denied, (Dec. 19, 2018).
- <sup>3</sup> [Anderson v. Yellow Cab Co.](#), 179 Wis. 300, 191 N.W. 748, 31 A.L.R. 1197 (1923); [Shikany v. Salt Creek Transp. Co.](#), 48 Wyo. 190, 45 P.2d 645 (1935).
- <sup>4</sup> [Automobile Ins. Co. of Hartford, Conn. v. Cochran](#), 262 Mich. 605, 247 N.W. 755 (1933).

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## 13 Am. Jur. 2d Carriers § 7

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### Carriers

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### Part One. In General

#### I. Definitions and Distinctions

#### B. Factors Affecting Status as Common Carrier

## § 7. Persons or property carried

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  4

It is not essential to the status of being a common carrier to carry all kinds of property offered.<sup>1</sup> Thus, a carrier who elects to carry freight only is under no obligation to carry passengers and vice versa.<sup>2</sup>

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### Footnotes

<sup>1</sup> Bowles v. Wieter, 65 F. Supp. 359 (E.D. Ill. 1946); Alabama Great Southern R. Co. v. Herring, 234 Ala. 238, 174 So. 502 (1937); Campbell v. A.B.C. Storage & Van Co., 187 Mo. App. 565, 174 S.W. 140 (1915); State ex rel. Utilities Commission v. Gulf-Atlantic Towing Corp., 251 N.C. 105, 110 S.E.2d 886 (1959).

<sup>2</sup> State ex rel. Bd. of R. R. Com'rs v. Rosenstein, 217 Iowa 985, 252 N.W. 251 (1934); Anderson v. Smith-Powers Logging Co., 71 Or. 276, 139 P. 736 (1914).

## 13 Am. Jur. 2d Carriers § 8

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### Carriers

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### Part One. In General

#### I. Definitions and Distinctions

#### B. Factors Affecting Status as Common Carrier

## § 8. Exclusiveness and regularity of business

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  4

It is a factor in deciding if a party is a common carrier to consider whether it maintains a regular place of business for the purpose of transportation.<sup>1</sup> A common carrier may combine its transportation function with other vocations and still be considered a common carrier<sup>2</sup> unless transportation is incidental to the business<sup>3</sup> and hence makes one a private carrier.<sup>4</sup> A carrier is no less a common carrier because it is not exclusively in the business of transporting persons.<sup>5</sup> An entity may be considered a common carrier as to only a portion of its operations.<sup>6</sup>

It is not necessary for a common carrier to operate on a regular schedule.<sup>7</sup>

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### Footnotes

- <sup>1</sup> [Martine v. Heavenly Valley Limited Partnership](#), 27 Cal. App. 5th 715, 238 Cal. Rptr. 3d 237 (3d Dist. 2018), review denied, (Dec. 19, 2018).
- <sup>2</sup> [Wright v. Midwest Old Settlers and Threshers Ass'n](#), 556 N.W.2d 808 (Iowa 1996); [Reaves v. Western Union Telegraph Co.](#), 110 S.C. 233, 96 S.E. 295 (1918).
- <sup>3</sup> [Dolese Bros. Co. v. Privett](#), 1981 OK 2, 622 P.2d 1080 (Okla. 1981) (the operator of a crushed rock business acquired its fleet of trucks because third-party trucking operations became inadequate).
- <sup>4</sup> [§ 3.](#)
- <sup>5</sup> [Kvalheim v. Horace Mann Life Ins. Co.](#), 219 N.W.2d 533 (Iowa 1974).

<sup>6</sup> [Beavers v. Federal Ins. Co.](#), 113 N.C. App. 254, 437 S.E.2d 881 (1994).

<sup>7</sup> [Purolator Sec., Inc. v. Thorneycroft](#), 116 Ariz. 394, 569 P.2d 824 (1977); [Huang v. The Bicycle Casino, Inc.](#), 4 Cal. App. 5th 329, 208 Cal. Rptr. 3d 591 (2d Dist. 2016); [Walton v. A. B. C. Fireproof Warehouse Co.](#), 235 Mo. App. 939, 151 S.W.2d 494 (1941).

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## 13 Am. Jur. 2d Carriers § 9

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### Carriers

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### Part One. In General

#### I. Definitions and Distinctions

#### B. Factors Affecting Status as Common Carrier

## § 9. Fixed route or terminals

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  4

For a public conveyance to be a common carrier, it is not necessary that it move between fixed terminals<sup>1</sup> or even on fixed routes.<sup>2</sup> However, while there is authority that to be a common carrier in a particular instance the carriage must be over a route or within a territory over or within which there is a general undertaking to carry goods for the public generally as a business,<sup>3</sup> the contrary rule is also recognized.<sup>4</sup>

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### Footnotes

<sup>1</sup> [Purolator Sec., Inc. v. Thorneycroft](#), 116 Ariz. 394, 569 P.2d 824 (1977); [Walton v. A. B. C. Fireproof Warehouse Co.](#), 235 Mo. App. 939, 151 S.W.2d 494 (1941); [Anderson v. Yellow Cab Co.](#), 179 Wis. 300, 191 N.W. 748, 31 A.L.R. 1197 (1923).

<sup>2</sup> [Huang v. The Bicycle Casino, Inc.](#), 4 Cal. App. 5th 329, 208 Cal. Rptr. 3d 591 (2d Dist. 2016); [Walton v. A. B. C. Fireproof Warehouse Co.](#), 235 Mo. App. 939, 151 S.W.2d 494 (1941); [Anderson v. Yellow Cab Co.](#), 179 Wis. 300, 191 N.W. 748, 31 A.L.R. 1197 (1923).  
As to the effect of this rule on the status of taxicabs as common carriers, see [§ 16](#).

<sup>3</sup> [Ney v. Haun](#), 131 Va. 557, 109 S.E. 438, 18 A.L.R. 1310 (1921) (a transfer man licensed to do business in a particular city where he is a common carrier is not such a carrier with respect to a load of goods that he specially contracts to transport between two other cities).

<sup>4</sup> [Walton v. A. B. C. Fireproof Warehouse Co.](#), 235 Mo. App. 939, 151 S.W.2d 494 (1941).

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## 13 Am. Jur. 2d Carriers § 10

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### Carriers

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### Part One. In General

#### I. Definitions and Distinctions

#### B. Factors Affecting Status as Common Carrier

## § 10. Ownership, control, or license; agency for others

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Carriers](#)  4

To be a common carrier, it is not essential that the person or corporation own the means of transportation<sup>1</sup> or have a transportation license.<sup>2</sup>

A common carrier does not lose that status merely because the services that it renders to the public are performed as an agent for another.<sup>3</sup>

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### Footnotes

<sup>1</sup> [Brown & Root, Inc. v. American Home Assur. Co.](#), 353 F.2d 113 (5th Cir. 1965) (ownership is seldom the decisive factor); [J.H. Cowrie Glove Co. v. Merchants' Dispatch Transp. Co.](#), 130 Iowa 327, 106 N.W. 749 (1906); [Walton v. A. B. C. Fireproof Warehouse Co.](#), 235 Mo. App. 939, 151 S.W.2d 494 (1941); [Highway Freight Forwarding Co. v. Public Service Commission](#), 108 Pa. Super. 178, 164 A. 835 (1933).

<sup>2</sup> [Huang v. The Bicycle Casino, Inc.](#), 4 Cal. App. 5th 329, 208 Cal. Rptr. 3d 591 (2d Dist. 2016).

<sup>3</sup> [Union Stock Yard & Transit Co. of Chicago v. U.S.](#), 308 U.S. 213, 60 S. Ct. 193, 84 L. Ed. 198 (1939).

